

to control for interstate differences in the remuneration of mental health workers. Given the differences in wage and income levels between Massachusetts and Alabama, for example, such an omission seems very important (Rubin acknowledges these problems). The explanation of the cost estimation procedure is valuable for administrators and planners, but the specific estimates cannot be supported.

Mental health administrators, especially at the state level, will find *Economics, Mental Health, and the Law* a valuable guide to the problems and costs associated with administration in a postlitigation world. Health services researchers wishing to undertake work in mental health delivery will find it a valuable guide to the current cost and regulatory environment in that segment of the health care industry. The questions Rubin could not address can become subjects for the next generation of scholars.

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Health Facility Regulation, The North Carolina Law Review Symposium.

Kenneth R. Wing (ed). Cambridge, MA: Oelgeschlager, Gunn & Hain, Publishers, Inc., 1980. 325 pp.

The editor of this collection of papers, first published as a symposium in the *North Carolina Law Review*, has performed an important service in making these excellent analyses of health facility regulation available to a wider audience. As problems of accessibility, quality, and escalating costs of health care continue, despite an ever-growing proportion of GNP devoted to health care, the na-

ture, adequacy, and even necessity of regulation have come under increasing scrutiny. How can we assure access to hospital care for the poor, or good-quality, long-term care for the elderly, or appropriate use of expensive medical technology? These are some of the questions facing our regulatory system.

This informative and provocative book contains six objective, scholarly, useful, and fascinating analyses of various aspects of health facility regulation.

The first chapter, "Health Care Regulation: Dilemma of a Partially Developed Public Policy," by Kenneth R. Wing and Burton Craige, presents an overview of facility regulation. The authors start with an account of the far-seeing Hill-Burton Act of 1946 and its promotion in a single program of urgently needed construction (following the Great Depression and World War II), of hospital licensure, and of statewide planning of facilities. Then, they describe the growth of hospitals in the United States, the variation in their characteristics, the factors contributing to the rise in hospital costs, the growth of the nursing home industry, and the principal governmental controls on health care. One may differ with the authors' evaluation of the Hill-Burton Act as merely a "federal presence in construction," rather than as a major early force impelling standards for and planning of hospitals. But few will dissent from the analysis of the kind of regulation needed to assure high quality in nursing home care and to control fraud and abuse. The authors see in the future various approaches, including incremental increases in regulation, more serious efforts under existing regulatory programs, or major restructuring of the health care system. This discussion stimulates the reader's own

thoughts in preparation for the chapters that follow.

The second chapter, by Stephen M. Weiner, deals with public participation in the processes of a regulatory agency and its effect in generating support for the agency's program of cost containment. Using the Massachusetts legislation and experience as documentation, the author finds that the openness to broad citizen participation of an agency's decision making processes is not correlated with effective political support for the agency's program. Flowing from this analysis is a thoughtful discussion of the need to link regulatory activities with planning and review responsibilities, and of the possible effect of this strategy on cost containment.

The third chapter, "Making Certificate of Need Work," by Michael K. Schonbrun, is a clear, informative, and interesting analysis of the CON program. The chapter opens with mention of the first CON legislation enacted in New York in 1964 and a summary of "Roemer's Law," the now generally accepted view that under widespread insurance, physicians and hospitals tend to fill the beds that exist, regardless of their ratio to population. What the author perhaps did not know is that Milton Roemer's work on this problem in Saskatchewan, Canada, and in Ithaca, New York, provided the rationale for Senator George Metcalf's pioneering CON legislation in New York State.

Whether one subscribes to what the author calls the majority view, that the CON legislation is a failure, or to the minority view, that it is a limited success, or to the need for other regulatory measures (some of which are suggested in the chapter) to implement an essentially sound principle, the reader is impelled to consider how the certificate-of-need program could

be made to work effectively. Certainly, the control exercised by a planning program with clout or by a universal payment mechanism, which could deny reimbursement for all patients in unauthorized beds (not merely for such Medicare and Medicaid patients), would heighten the effectiveness of the CON program as both a quality and a cost control mechanism.

The fourth chapter, by Patricia A. Butler, "Assuring the Quality of Care and Life in Nursing Homes: The Dilemma of Enforcement," is worth the cost of the entire book. This chapter deals with one of the most pressing issues facing American society, and it illustrates not only the necessity but also the urgency of effective regulatory measures to alleviate human suffering. It sets forth the inadequacy of the current regulatory system to control the proprietary sector that dominates the nursing home field, the options for reform, and the capacity of the reimbursement mechanism, if properly utilized, to assure high-quality nursing home care. In discussing possibilities for reform, the author considers the alternative of substituting competition for regulation and rejects it with these words:

There is little reason to believe that elimination of regulatory programs and reliance on market place competition will operate to improve the quality of care, given the present structure of the nursing home industry and the means by which it is currently financed. Without truly informed consumer judgment and complete freedom of choice, which will not exist if there is a shortage of facilities or noninstitutional alternatives in an area, simply eliminating the regulatory processes seems inappropriate. Consumers of nursing home services are not in a position to judge quality, since they are usually ill and often impaired. Furthermore, unless accurate quality indices are developed and made available to the public, individual consumers are incapable of identifying high quality homes in their area that will meet their needs. Even if consumers were informed about quality

of care in various institutions and if sufficient beds were available to permit them to exercise a real choice, consumers often could not make an informed decision about whether to enter a nursing home without access to noninstitutional alternatives.

The existence of a spectrum of alternatives in long-term health care, along with informed awareness, could provide the competitive circumstances that would compel nursing homes to provide visible, high quality care at a reasonable cost. But conditions do not currently exist to permit competition alone to assure nursing home quality of care without some form of active government intervention. [footnotes omitted; pp. 166-67.]

In addition to these arguments, of course, one cannot overlook the fundamental need for protective regulation as long as the nursing home industry is predominantly profit-making. For this reason, Patricia Butler's call for more effective and imaginative regulatory mechanisms should be heeded by all concerned.

Chapter 5, by Joanne K. Hilferty, analyzes the New York experience in capital financing of hospitals. The discussion is not limited to New York, however. Much general information is lucidly presented on how capital financing is undertaken, how Medicare and Medicaid reimburse hospitals for interest and other capital costs, and how capital financing for hospitals affects health policy.

The final chapter, by Kenneth R. Wing and Andrew M. Sifton, "Constitutional Authority for Extending Federal Control over the Delivery of Health Care," deals with legal and constitutional issues. It analyzes possible legal questions that may arise in the future and constitutional constraints that might be invoked to limit regulation. It speculates about judicial restrictions that might be imposed on regulatory mechanisms but concludes that the broad authority of Congress under the interstate com-

merce clause will probably serve to authorize all reasonable regulation—and reasonable regulation in the future may be stronger or more effectively implemented than current controls. The authors indicate that the type and effectiveness of regulation will ultimately be determined by political forces.

Two important themes recur in the book, although they are not thoroughly discussed in any particular chapter. The first is the need for regulation. It is suggested that regulation is necessary to protect the public in a situation where the patient does not choose or even pay directly for the kind of care he receives, and is not in a position to evaluate its quality. Furthermore, where there is a profit or some gain to be made by an individual or an institution, regulatory mechanisms are essential to protect the quality of care. With the escalation of health care costs in a fee-for-service system, the need for cost containment provides a further urgent reason for regulation, if limited resources are to be used equitably in accordance with health needs.

The other issue mentioned by several authors is how current regulatory mechanisms could be improved. A number of proposals are made, but the most important are (a) greater funding for implementation of controls, (b) better trained and better paid staff in regulatory agencies, (c) more affirmative technical assistance to facilities to help them comply with required standards and performance, (d) changed attitudes on the part of regulators and regulatees, and, above all, (e) enactment of a universal financing mechanism for health care. A sound universal financing mechanism would help to shape the system in more rational directions and would provide the clout necessary for effective planning and regulation.

If any criticism can be made, and this is done with diffidence, it is perhaps that the analytical talents of lawyers—trained as they are to contend and litigate within a regulatory system—make them excessively concerned with the deficiencies and weaknesses of current health care regulation. Recognizing the importance of regulation in the mixed public-private American health care system, they nevertheless tend to stress the weaknesses of the regulatory measures, failing to recognize that the absolute necessity of regulation will be the mother of invention, leading to better regulatory measures more effectively implemented.

This book is a treat to read. It is full of information, clearly presented, thoroughly documented, rich in insights, and it provokes in the reader thoughts and ideas about how these problems might be solved. Although written by lawyers in legal style, it speaks to hospital administrators, health planners, health policy analysts, and citizens concerned with the vital issues of access to, quality, and costs of health care.

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